

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

2015 DODGE RAM 3500 TRUCK, VIN
3C6URVJG5FES12061, 44,846.80
CARTONS OF ASSORTED BRAND
CIGARETTES, ASSORTED
SAMPLES OF ASSORTED CARTONS
OF CIGARETTES, CROWN FORK-
LIFT, RR S200 SERIES, SERIAL
NUMBER 1A268808, 52,843
CARTONS OF ASSORTED BRAND
CIGARETTES, and 2005
FREIGHTLINER M2106 BOX
TRUCK, VIN
1FVACWDCX5HV11800,

Defendants.

4:18CV3097

MEMORANDUM AND ORDER

HCI Distribution, Inc. (“HCID”) and Rock River Manufacturing, Inc. (“Rock River”), the Claimants, object to the Magistrate Judge’s Order dated December 14, 2018 (Filing 77), in which the Magistrate granted the Government’s Motion for Interlocutory Sale of tobacco seized by the government. After de novo review, I now deny the objection and affirm the Magistrate Judge’s thorough and thoughtfully reasoned opinion.

I add only one caveat which was implicit in Judge Zwart’s order. The Magistrate Judges Order was *interlocutory*. If the Claimants prevail on the merits, the Government will be liable to the Claimants for the taxes previously paid on the tobacco by the Claimants and damages otherwise accruing to the Claimants resulting

from the interlocutory sale of the tobacco. The Government does not otherwise argue. In any event, the Government will be estopped from any such assertion if it proceeds with the sale but fails on the merits.

IT IS ORDERED that the Magistrate Judge's order authorizing the sale of the tobacco (filing no. 77) is affirmed and the Objection (filing no. 79) is denied. However, if the Claimants prevail on the merits, the Government will be liable to the Claimants for the taxes previously paid on the tobacco by the Claimants and damages otherwise accruing to the Claimants resulting from the interlocutory sale of the tobacco. The Government will be estopped from any contrary assertion if it proceeds with the sale but fails on the merits

Dated this 31st day of December 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge